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CARLYLE F. GRONNING, in his official capacity as Chairman Commissioner of the Industrial Commission of Utah v. HERBERT F. SMART, in his official capacity as Director of Finance, Department of Finance, State of Utah, and Administrator of the State Insurance Fund; DAVID S. MONSON, State Auditor; and DAVID L. DUNCAN, State Treasurer : Amicus Brief

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Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

\* \* \* \* \*

CARLYLE F. GRONNING, in his )  
official capacity as Chairman )  
Commissioner of the Indus- )  
trial Commission of Utah, )

Plaintiff- )  
Respondents, )

vs. )

HERBERT F. SMART, in his )  
official capacity as Director )  
of Finance, Department of )  
Finance, State of Utah, and )  
Administrator of the State )  
Insurance Fund; DAVID S. )  
MONSON, State Auditor; and )  
DAVID L. DUNCAN, State )  
Treasurer, )

Defendants- )  
Appellants. )

\* \* \* \* \*

BRIEF OF AMICI CURIAE RIO ALGOM CORPORATION  
AND PARK CITY VENTURES

Case No. 14846

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Appellants. )

BRIEF OF AMICI CURIAE  
RIO ALGOM CORPORATION  
AND PARK CITY VENTURES

Case No. 14846

\* \* \* \* \*

STATEMENT OF THE NATURE OF THE CASE

This is an action challenging the constitutional validity of appropriations by the State Legislature from the State Insurance Fund for the purpose of paying for the employment of safety inspectors by the Utah State Industrial Commission.

DISPOSITION OF LOWER COURT

The Trial Court held that the appropriations challenged in the instant action were constitutionally valid.

NATURE OF RELIEF SOUGHT ON APPEAL

Amici Curiae seek to support the position of the appellant in seeking reversal of the judgment of the District

Court and to secure a declaration that the appropriations challenged by means of this action are unconstitutional.

#### STATEMENT OF FACTS

The Statement of Facts submitted by Appellant and Respondent are accepted by Amici Curiae.

#### ARGUMENT

THE APPROPRIATIONS OF MONIES FROM THE STATE INSURANCE FUND TO BE EXPENDED BY THE STATE INDUSTRIAL COMMISSION ARE UNCONSTITUTIONAL DEPRIVATIONS OF PROPERTY FROM ALL CONTRIBUTORS TO THE FUND.

The heart of the question before the Court is who owns the State Insurance Fund. If it is the employers whose insurance premiums constitute the Fund, appropriations by the State Legislature of that Fund would be an unconstitutional seizure of their property. If the Fund is a state Fund, its appropriations by the Legislature would be valid. Since this Court has declared that the contributors to that fund own it, appropriations from it by the State Legislature are a deprivation of their property without due process of law.

In the case of Chez v. Industrial Commission of Utah, 90 Utah 447, 62 P.2d 549, 108 A.L.R. 365 (1936), this Court declared in three separate places that the State Insurance Fund is the property of the employers whose contributions create and fund the State Insurance Fund:

"[It] is a common fund belonging to the participating employers." 90 Utah 447, \_\_\_, 62 P.2d 549, 550 (1936),

and

"The fund . . . belongs, not to the state, but to the contributing employers for their mutual benefit." 90 Utah 447 at \_\_\_, 62 P.2d 549 at 551,

and

" . . . we have concluded that the State Insurance Fund, while a public fund in the sense of being administered by a public body, is not public money in the sense that it is money of the state to be used for and on behalf of the state for a state expenditure," 90 Utah 447 at \_\_\_, 62 P.2d 549 at 551.

This last statement followed a declaration by this Court that the Insurance Fund:

" . . . is an insurance business for the benefit and accomodation of the contributing employers." 90 Utah 447 at \_\_\_, 62 P.2d 549 at 551.

It is thus clear that this Court determined in 1936 that the State Insurance Fund and the monies contained in it belong not to the State of Utah but to the contributors; that is, the employers, such as Amici Curiae, whose premiums constitute the State Insurance Fund.

In 1975 Rio Algom Corporation contributed to the State Insurance Fund \$69,123, and for the first eleven months of 1976 contributed \$80,652. Park City Ventures contributed \$79,337 to the Fund in 1975 and \$121,335 in 1976. For each of these years the appropriations by the State Legislature from the State Insurance Fund would have the effect of depleting the Fund's balance

in the amounts appropriated, thus either seizing funds that would otherwise have reduced the refund due Amici Curiae and all other contributing employers, §35-3-10(4), Utah Code Annotated, 1953, or causing the premiums paid to be raised by a proportionate share of the amount seized. This takes away from Amici Curiae and all other contributors funds that would otherwise have been available to them; money which this Court has declared is held for their benefit by the Fund.

This action is in fact an expropriation of this money from all employers who have contributed to the State Insurance Fund. It is clearly contrary to the provisions of Article 1, Section 7 of the Constitution of the State of Utah and the Fourteenth Amendment to the Constitution of the United States. It takes property from the contributing employers without any semblance of due process of law. Tolman v. Salt Lake County, 21 Utah 2d 310, 437 P.2d 442 (1968); Trade Commission of Utah v. Skaggs Drug Centers, 21 Utah 2d 431, 446 P.2d 958 (1968); Riggins v. District Court of Salt Lake County, 89 Utah 183, 51 P.2d 645 (1936).

Both appellant and respondent argue the application to this case of additional provisions of State Law, specifically Section 35-3-1, Utah Code Annotated, 1953. Their arguments are addressed to the question of whether or not the challenged appropriations are a proper utilization of funds for the administrative expense incident to the business of the Fund as authorized



by this statute. Amici Curiae submit to this Court that administrative expenses authorized by Section 35-3-1, Utah Code Annotated, 1953, are those expenses directly involved in the administration of the Fund, so the challenged appropriations are not proper under either the applicable statutes or the Constitution of the State of Utah and the United States of America.

It is contended by respondent that the 1967 amendment to Section 35-3-1, Utah Code Annotated, 1953, permits appropriations from the Fund for the administration of the Act, that the employment of safety inspectors is part of the "conduct and administration of the business of said Fund" and finally, that the salary of said safety inspectors is properly chargeable against the State Insurance Fund. The premise upon which respondent bases this reasoning is not supported by legislative history.

Prior to the 1967 amendment relied upon by respondent, Section 35-3-1, Utah Code Annotated, 1953 provided that:

"the Commission of Finance may appoint, with the approval of the Governor, a manager and may employ accountants, inspectors, attorneys . . . and such other experts and assistants as it deems advisable."

This provision placed responsibility for the administration of the Fund's business upon the Commission of Finance. That agency alone still has the authority to employ whatever experts, assistants, etc. deemed advisable to carry out the business of the Fund. The reference in the statute to "inspectors" contemplated auditors or financial inspectors, not safety inspectors. It is

inconceivable that the Legislature intended the Commission of Finance to employ and supervise inspectors of something other than financial matters; that is, something completely outside their area of expertise and the scope of operations of that office. All the other categories of employees described are within that category; that is, regular Fund administration. The only change provided for by the 1967 legislative amendment to Section 35-3-1, Utah Code Annotated, 1953, is that the administrative expenses for administering the State Insurance Fund are to be provided for by legislative appropriation from the same Fund. This amendment did not authorize, and no provision of any statute governing either the State Insurance Fund or the State Industrial Commission has ever authorized, the hiring of safety inspectors with monies contained in the State Insurance Fund. The creation, implementation and enforcement of safety programs to the benefit of the workers in this state is the responsibility and function of the Industrial Commission, a State agency. Sections 35-1-16 and 35-1-31, Utah Code Annotated, 1953. The Insurance Fund is not a State Fund. Chez v. Industrial Commission of Utah, supra. It was created and is maintained solely to compensate injured or diseased employees eligible for such compensation. The argument between the appellant and respondents as to whether or not safety programs reduce premiums misses the point that the hiring of safety inspectors is not necessary for the administration of the Fund.

If a State safety program implemented to benefit workers also benefits employers by reducing their insurance premiums, then the program is doubly meritorious. This does not mean, however, that the program can be financed by legislative appropriation of the employers' fund any more than it could be financed by the State appropriation of the workers' private bank accounts.

Finally, whether or not money has been wrongfully taken from the Fund in the past is irrelevant. It is challenged now when substantial private monies; that is, monies owned by the employers such as Amici Curiae, are being expended for State purposes. The argument over whether or not this has been done in the past is a way of avoiding rather than confronting the primary issue; to-wit, it is not past actions that are being challenged, it is the instant appropriations. The challenged Legislative appropriations are a dramatic seizure of monies from the employers whose contributions make up the Insurance Fund. That is the action to which Amici Curiae object. They are in fact and in law a seizure of private money for State purposes without due process of law which is required by the provisions of Section 7 of Article 1 of the Constitution of the State of Utah and the Fourteenth Amendment to the Constitution of the United States. Tolman v. Salt Lake County, supra; Riggins v. District Court of Salt Lake County, supra.

CONCLUSION

The appropriations by the State Legislature of State Insurance Fund's monies for the purposes of the Utah State Industrial Commission are unconstitutional. This Court must so rule and reverse the Trial Court accordingly.

DATED this 8<sup>th</sup> day of February, 1977.

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CERTIFICATE OF MAILING

I hereby declare that I caused to be mailed a true and correct copy of the foregoing Brief of Amici Curiae Rio Algom Corporation and Park City Ventures in Case No. 14846, postage prepaid, this 8<sup>th</sup> day of February, 1977, to Robert B. Hansen, Attorney General and Joseph P. McCarthy, Assistant Attorney General, Attorneys for Appellants, at 236 State Capitol Building, Salt Lake City, Utah, 84114; and to A. Wally Sandack, Special Assistant Attorney General, Attorney for Respondent, at 370 East Fifth South, Salt Lake City, Utah, 84111.

DAVID S. DOLOWITZ